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10/605,873	11/03/2003	Michael R. Anderson	10008.3855	2872
22235	7590	12/22/2005	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/605,873  
Filing Date: November 03, 2003  
Appellant(s): ANDERSON, MICHAEL R.

**MAILED**  
**DEC 22 2005**  
**Group 3700**

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Barry L. Haley  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/16/2005 appealing from the Office action mailed 6/1/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claim 6.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

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**(8) Evidence Relied Upon**

1,774,258	ENGLISH	8-1930
3,156,369	BOWES ET AL	11-1964
5,038,951	RIZZARDI	8-1991
6,053,314	PITTMAN	4-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 4 are finally rejected under 35 U.S.C. 102(b) as being anticipated by English (1,774,258). English discloses a capsule that contains liquid and/or dry material (8) to be subsequently dispensed into a container (2) comprising a capsule body (4, 9) that is impervious to liquid including a first member (4) and a second member (9) mountable in the first member. The first member body having a top opening (between flange 5) and a sealed closed bottom and a second member having a sealed closed top and an open bottom and a cutting element (12) defining the opening bottom. The first and second members in a first mode are sealed forming the capsule body preventing any liquid or dry material from escaping the capsule body. The cutting element comprises a first prong and a second prong disposed along the

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peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge (Figures 3-4).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes et al. (3,156,369; hereinafter Bowes'369) in view of English (1,774,258). Bowes'369 discloses a capsule that contains liquid and/or dry material to be subsequently dispensed into a container (11) comprising a capsule body (15, 26) that is impervious to liquid including a first member (15) and a second member (26) mountable in the first member. The first member body having a top opening and a sealed closed bottom (16) and a second member having a sealed closed top (28) and an open bottom and a cutting element (29, 34) defining the opening bottom. The first and second members in a first mode are sealed forming the capsule body preventing any liquid or dry material from escaping the capsule body by a resilient material band (35) (column 4, lines 1-7). Bowes'369 also discloses the other claimed limitations except for the cutting element comprises a first prong and a second prong disposed along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and

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forming the lower portion of the bottom edge. English teaches a capsule that contains liquid and/or dry material (8) to be subsequently dispensed into a container (2) comprising a capsule body (4, 9) that is impervious to liquid including a first member (4) and a second member (9) mountable in the first member. The first member body having a top opening (between flange 5) and a sealed closed bottom and a second member having a sealed closed top and an open bottom and a cutting element (12) defining the opening bottom. The first and second members in a first mode are sealed forming the capsule body preventing any liquid or dry material from escaping the capsule body. The cutting element comprises a first prong and a second prong disposed along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge (Figures 3-4). It would have been obvious to one having ordinary skill in the art in view of English to modify the cutting element of Bowes'369 so the cutting element comprises a first prong and a second prong disposed along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge to facilitate cutting the closed bottom of the first member. As to claim 3, Bowes'369 discloses the first member sealed bottom includes an area of weakened material (31) around its periphery. As to claim 4, the first member (15) has a sealing means (35) that engages the second member.

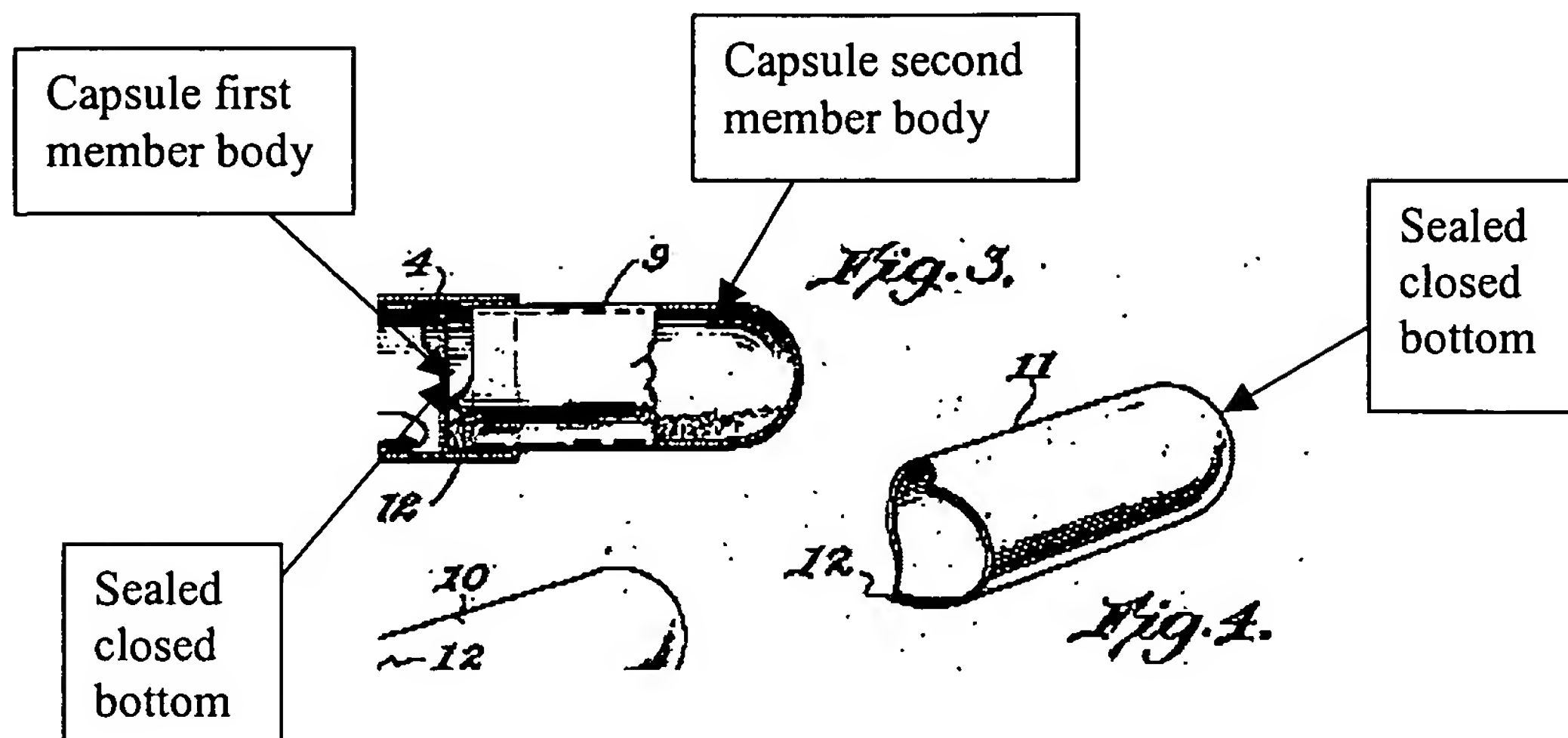
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5. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Rizzardi (5,038,951). Bowes'369 further discloses the capsule comprises the first member has a peripheral lip (21). However, Bowes'369 fails to show the lip comprises apertures. Rizzardi shows a cap (10) having a peripheral lip with apertures (15) (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Rizzardi to modify the first member of Bowes'369 so the lip includes apertures to reduce the material and to reduce the cost of manufacture.

### **(10) Response to Argument**

#### **First Ground of Rejection**

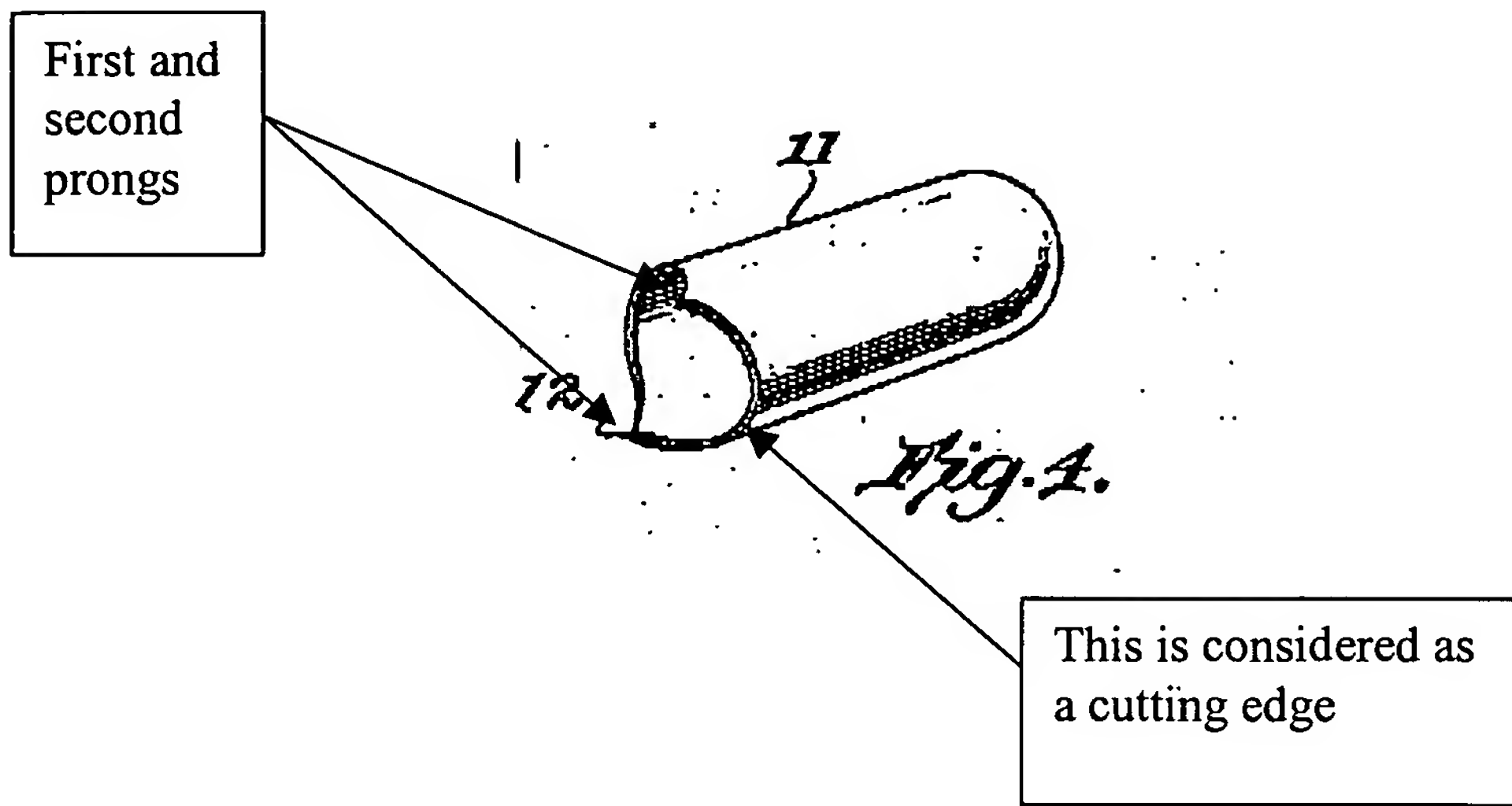
Appellant indicates that “The skirt or flange in Figure 2 of English'258 or the gelatinous partition 4 shown in Figure 3 is not a capsule first member body or a capsule second member body as required in applicant's claim 1” is noted. This is not persuasive because English'258 discloses the partition 4 connected to the flange 5 which is considered equivalent to the capsule first member body as claimed since the capsule first member body of English'258 has each and every limitations of the capsule first member body as required in applicant's claim 1 (see Figures 3 and 4 below).



### Second Ground of Rejection

Appellant argues that there is no teaching in English'258 or Bowes et al. to provide the cutting edge between the prongs is noted. This is not persuasive because the edge (see Figure 4 below) disposed between the first and second prongs of English'258 is considered equivalent to the cutting edge as claimed since the edge of English'258 is capable to be used as a cutting edge and also Bowes et al. disclose the cutting cylinder (27) comprises the cutting edge (29, 34) extended around the edge of the cylinder (Figures 1, 3 and 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of English'258 to modify the cutting edge of Bowes et al. so the cutting edge comprises a first prong and a second prong to facilitate removing the closed bottom of the first member body.





### Third Ground of Rejection

Appellant argues "... which allows one to drink the beverage through the aperture openings" is noted. This is not understood because there is no such which allows one to drink the beverage through the aperture openings in claim 5.

In response to applicant's argument that the examiner's combination is classic hindsight, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, it would have been obvious to one having ordinary skill in the art to provide apertures in the peripheral lip 21 of Bowes et al. as taught by Rizzardi'951 to reduce the material and the cost of manufacture.

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Fourth Ground of Rejection

After further reconsideration of claim 6 and the arguments in the brief, the Examiner is hereby withdraw the rejection with respect to claim 6 and claim 6 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Luan K. Bui  
Primary Examiner



Conferees:



Mickey Yu  
Supervisory Patent Examiner  
Group 3700



SHIAN LUONG  
PRIMARY EXAMINER